

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
H.C.P.No.253 of 2020

Kavitha

... Petitioner

Vs

1.State of Tamil Nadu,
Rep. by its Secretary to Government [Home],
Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.

2.District Magistrate and District Collector,
Tiruppur District,
Tiruppur.

3.The Superintendent,
Central prison,
Coimbatore - 18.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records of the 2nd respondent, in his proceedings in Cr.M.P.No.22/Sexual Offender/2019, dated 13.11.2019 to quash the same and consequently direct the respondents to produce the detenu, Thiru Murugesan, S/o.Ramasamy aged about 47 years now confined in Central Prison, Coimbatore before this Hon'ble Court set him at liberty forthwith.

For Petitioner : Mr.Sudhakar.

For Respondents: Mr.R.Prathap Kumar,
Additional Public Prosecutor.

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.The Wife of the detenu has challenged the detention order passed against the detenu in Cr.M.P.No.22/Sexual Offender/2019, dated 13.11.2019 by the Second Respondent, branding him as

'Sexual Offender' under the Tamil Nadu Act 14 of 1982, as the detenu is said to have assaulted a minor girl aged about 15 years who is studying 9th standard on 25.09.2019 when she went for purchasing biscuits. Thereafter, based on the complaint given by the mother of the minor girl on 26.09.2019, case was registered in Cr.No.10 of 2019 under Sections 7 read with 8 of Protection Of Children from Sexual Offences Act, 2012 and Section 506 (ii) of Indian Penal Code and Section 3 (1)(w)(i), 3 (2)(va) of Schedule Caste and Schedule Tribe (Prevention of Atrocity Act).

3.Heard Mr.Sudhakar, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.The learned Counsel appearing for the Petitioner submitted that the petitioner has given representation on 14.01.2020 and it was disposed only on 20.02.2020 and therefore, there is a delay in disposing of the representation sent on behalf of the detenu. Secondly, he submitted that bail application already filed was dismissed and second bail application has not been filed. Hence, there is non-application of mind on the part of the detaining authority while satisfying about the imminent possibility of the detenu coming out on bail. Hence, he seeks for allowing of the petition.

5.However, the learned Additional Public Prosecutor appearing for the respondents submitted that the detenu has already got a previous case of similar offence in Cr.No.4 of 2019 under Sections 5 (K)(l)(n) read with Section 6 of Protection of Children from Sexual Offences Act 2012 and Section 506 (ii) of Indian Penal Code in which the detenu is said to have sexually harassed a mentally not sound minor girl aged about 13 years. Sighting the above case, he would submit that if the detention order is quashed, he will commit similar offence. With regard to the delay in disposal of the representation sent on behalf of the detenu, he submitted that the delay in passing the detention order is due to collecting of materials from various authorities and the delay is neither wilful nor wanton and the same can be explained. Further, the learned Additional Public Prosecutor would submit that imminent possibility of coming out on bail has to be decided based on the gravity of the offence and facts of the individual case as laid down by the Hon'ble Supreme Court in Union of India and Another -vs- Dimple Happy Dhakad reported in '2019 SCC OnLine SC 875'. Therefore, the contentions of the learned Counsel for the Petitioner are not sustainable and sought for dismissing the petition.

6.With regard to the first ground raised by the learned

Counsel appearing for the Petitioner that there was a delay in disposing of the representation sent on behalf of the detenu, it is brought to the notice of this Court that there is no deliberate delay on the part of the detaining authority in disposing of the representation and in other words, the delay is neither wilful nor wanton. With regard to the second ground raised by the learned Counsel appearing for the petitioner that the bail petition filed by the detenu has already been dismissed and the second bail petition has not been filed, this Court is of the view that merely because the detenu has not filed second bail petition, it does not prevent the detenu from filing bail petition in future and always the said right is available with the detenu and the Court may grant bail under the prevailing circumstances in future. Moreover, as rightly pointed out by the learned Additional Public Prosecutor appearing for the respondents, the imminent possibility of the detenu coming out on bail has to be decided based on the gravity of the offence and the facts of the case as laid down by the Hon'ble Supreme Court in Union of India and Another -vs- Dimple Happy Dhakad reported in '2019 SCC OnLine SC 875' and the relevant Paragraph of the said Judgment is usefully reproduced as follows:

"The court must be conscious that the satisfaction of the detaining authority is "subjective" in nature and the court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. By various decisions, the Supreme Court has carved out areas within which the validity of subjective satisfaction can be tested. In the present case, huge volume of gold had been smuggled into the country unabatedly for the last three years and about 3396 kgs of the gold has been brought into India during the period from July 2018 to March 2019 camouflaging it with brass metal scrap. The detaining authority recorded finding that this has serious impact on the economy of the nation. Detaining authority also satisfied that the detenues have propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detenues, the detaining authority satisfied itself as to the detenues' continued propensity and their inclination to indulge in acts of smuggling in a planned manner to the detriment of the economic security of the country that there is a need to prevent the detenues from smuggling goods. The High Court erred in interfering with the satisfaction of the

detaining authority and the impugned judgment cannot be sustained and is liable to be set aside."

10. Further, it is seen from the records that the detaining authority in Paragraph Number 5 of the detention order, has categorically stated that how he arrived at the satisfaction and came to the conclusion that the Courts are granting bail and there is no prohibition for the detenu to file bail petition in future. Further, in the Judgment of the Hon'ble Supreme Court of India in the case of "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498", it has been held that once the detaining authority is satisfied with the imminent possibility of the detenu coming out on bail, the detention order cannot be vitiated and the relevant Paragraph of the said Judgment is usefully extracted as follows:

"48. Now so far as the reliance upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sraavan (supra) by the learned Counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions applicable to the facts of the case on hand. Even in the case of Rekha (supra), the decision of the Constitution Bench of this Court in the case of Rameshwar Shaw (supra) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned counsel appearing on behalf of the detenus, in the case of Dimpy Happy Dhakad (supra), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in custody and is likely to be released on bail and on

being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the Detaining Authority."

11.From the above, it is clear that the detaining authority is satisfied that if the detenu is likely to be released from the custody, he is likely to indulge in such prejudicial activities and hence, the detaining authority is justified in passing the detention order. Therefore, the contentions of the learned Counsel appearing for the petitioner are rejected.

12.Accordingly, this Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.State of Tamil Nadu,
Rep. by its Secretary to Government [Home],
Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
- 2.District Magistrate and District Collector,
Tiruppur District, Tiruppur.
- 3.The Superintendent,
Central prison,
Coimbatore - 18.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.
- 5.The Director General of Police, Chennai - 4.
- 6.The Inspector General of Prison, Chennai - 10.
- 7.The Superintendent of Police,
Tiruppur District.

H.C.P.No.253 of 2020

RGN(CO)
GN(03/02/2021)